

² 5 U.S.C. § 8101 *et seq.*

April 29, 2017, for which he was without fault, because life insurance premiums had not been deducted from his FECA compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on May 19, 1981 the employee, then a 31-year-old automobile mechanic, sustained a lumbosacral strain and herniated disc at L4-5 when he changed the transmission in a bus while in the performance of duty. It paid him wage-loss compensation for disability and medical benefits.

In a telephone of call memorandum (CA-110) dated May 30, 2018, the employee's sister informed OWCP that the employee passed away on March 8, 2018.

In an August 27, 2018 letter, entitled "life insurance adjustment request," received on that day, the Office of Personal Management (OPM) requested that OWCP refer to an attached OPM document and make an adjustment, if necessary. In the attached document, OPM advised that the employee was insured under the Federal Employees' Group Life Insurance (FEGLI) plan. It noted that he was enrolled in post-retirement basic life insurance (PRBLI) with no reduction, effective April 2, 1983, and optional life insurance (OLI) based on coverage for code N1 with the family option. OPM further indicated that the employee's adjusted annual salary on which life insurance deductions were based was \$22,755.20.

In a preliminary determination notice dated October 23, 2018, OWCP informed the employee's estate that the employee had received an overpayment of compensation in the amount of \$29,131.13 because PRBLI and OLI premiums either had been improperly deducted or had not been deducted from his FECA compensation payments for the period April 2, 1983 through April 29, 2017. It explained that it had deducted insurance premiums for a lower annual base salary than that provided by OPM and deducted for Code N1 for the period October 7, 2001 through October 7, 2004 only. OWCP found that the employee was without fault in the creation of the overpayment because he was not aware, nor could he have been reasonably aware that it had paid compensation incorrectly. It requested that the employee's estate complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, OWCP informed it that, within 30 days of the date of the letter, it could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In an overpayment worksheet dated October 23, 2018, OWCP noted that no deductions were made for PRBLI for the period January 1, 1990 to October 6, 2001 and OLI for the period April 2, 1983 to October 6, 2001. The correct deductions for this period totaled \$10,196.47. OWCP noted that no deductions were made for the period October 7, 2001 to October 7, 2004 for PRBLI and OLI. The correct deductions for this period totaled \$2,038.23. OWCP indicated that

³ Docket No. 02-1831 (issued January 23, 2003).

no deductions were made for PRBLI and OLI for the period October 8, 2007 to April 29, 2017. The correct deductions for this period totaled \$16,896.43. OWCP added \$10,196.47, \$2,038.23, and \$16,896.43 to calculate a \$29,131.13 overpayment.⁴ Computer printouts revealed that no deductions had been made for PRBLI and OLI premiums during the period April 2, 1983 through April 29, 2017.

In a November 6, 2018 overpayment action request form, appellant, as administratrix of the employee's estate, requested that OWCP make a decision based on a review of the written record. She also requested a waiver of recovery of the overpayment. Appellant contended that the deceased employee had no reason to believe that he was being overpaid by the amount determined by OWCP. She further contended that there was no evidence to show that he had actual knowledge of the inadequate deductions made for his PRBLI and OLI premiums. In an accompanying Form OWCP-20, appellant reported that the employee had no monthly income or expenses, and no funds.

By decision dated January 9, 2019, OWCP finalized its preliminary overpayment determination finding that the employee had received an overpayment of compensation, for which he was not at fault, in the amount of \$29,130.86 for the period April 2, 1983 through April 29, 2017. It denied waiver of recovery of the overpayment as no financial information establishing his income or expenses was submitted. OWCP directed repayment of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁷ The coverage for BLI is effective unless

⁴ On the cover of its October 23, 2018 preliminary notice, OWCP indicated that the amount of the overpayment was \$26,005.36. However, in its calculations and conclusion, discussed *infra*, it noted that the overpayment amount was \$29,131.13. The Board notes that OWCP's calculation of this overpayment contained a mathematical error. Adding the overpayment amounts for no deductions for PRBLI from October 8, 2004 to April 29, 2017 yields an amount of \$8,119.67 rather than \$8,119.94 as found by OWCP. Adding \$8,119.67 with the overpayment amounts of \$8,776.49 for OLI deductions not made from October 8, 2004 to April 29, 2017 yields an overpayment amount of \$16,896.16 rather than \$16,896.43 as found by OWCP. Adding the overpayment amount of \$16,896.16 with the amount of \$10,196.47 for PRBLI and OLI not deducted from October 7, 2001 to October 7, 2004 and \$2,038.23 for PRBLI and OLI not deducted from October 7, 2001 to October 7, 2004 yields an overpayment of \$29,130.86. The Board deems this error harmless and will modify the amount of the overpayment to \$29,130.86. *See G.T.*, Docket No. 15-1314 (issued September 9, 2016).

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8702(a).

waived,⁸ and premiums for BLI and OLI coverage are withheld from the employee's pay.⁹ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹⁰ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.¹¹ However, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹²

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided: an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹³

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.¹⁴ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.¹⁵

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

¹¹ *Id.* at § 8707(b)(2).

¹² *Id.* at § 8706(b)(3)(B); *B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹³ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁴ 20 C.F.R. § 870.504(a)(1).

¹⁵ *Id.* at § 870.504(b).

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁶

OWCP procedures for recovery from a deceased debtor's estate provides that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹⁷ Thus, it should refer the debt to FMS for offset of the deceased claimant's last Federal tax refund under the Treasury's Offset Program (TOP).¹⁸ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The CE should follow the referral procedures set forth in PM 6.500.15(e), including sending the complete referral package to the National Office for final review and forwarding to the FMS.¹⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that the employee received an overpayment of compensation in the amount of \$29,130.86 for the period April 2, 1983 through April 29, 2017, for which he was without fault.

OWCP found that an overpayment of compensation in the amount of \$29,130.86 was created because it failed to deduct PRBLI and OLI premiums from the employee's wage-loss compensation for the period April 2, 1983 through April 29, 2017. It reviewed the fiscal record and determined that the employee had elected PRBLI and OLI and it explained that premiums had not been deducted for the appropriate period. The record includes OPM's August 27, 2018 letter notifying OWCP that the employee had elected PRBLI and OLI. The record also includes computer printouts showing that proper life insurance premium deductions were not made between April 2, 1983 and April 29, 2017.

The Board finds, however, that OWCP failed to adequately support its determination that the employee, now deceased, received a \$29,130.86 overpayment due to its failure to properly deduct premiums for PRBLI and OLI. While the record includes communications from OPM regarding the employee's PRBLI and OLI coverage, the record does not contain evidence that the employee affirmatively signed a document electing PRBLI or OLI coverage. The record does not contain a signed election form showing which coverage he actually selected or if he actually selected coverage. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement in

¹⁶ 5 U.S.C. § 8707(d); *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

¹⁸ 31 C.F.R. § 285.2.

¹⁹ *Supra* note 17 at Chapter 6.500.15(e).

order to establish the fact of overpayment of compensation.²⁰ As OWCP has not factually established the employee's election of PRBLI and OLI on the relevant dates, it has not met its burden of proof to establish that a \$29,130.86 overpayment was created between April 2, 1983 and April 29, 2017, as alleged.²¹

The Board therefore finds that OWCP has not met its burden of proof to establish that an overpayment of compensation occurred.²²

CONCLUSION

The Board finds that OWCP improperly determined that the employee received an overpayment of compensation in the amount of \$29,130.86 for the period April 2, 1983 through April 29, 2017.²³

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 25, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *J.P.*, Docket No. 18-1194 (issued April 28, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

²¹ *J.P.*, *id.*; *R.F.*, *id.*

²² *Id.*

²³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.